



## DEPARTMENT OF THE AIR FORCE

HEADQUARTERS AIR FORCE MATERIEL COMMAND  
WRIGHT-PATTERSON AIR FORCE BASE, OHIO

11 DEC 1995

## MEMORANDUM FOR OO-ALC/PK

FROM: HQ AFMC/PKM  
4375 Chidlaw Road, Suite 6  
Wright-Patterson AFB OH 45433-5006

SUBJECT: Unilateral/Bilateral Modifications (OO-ALC/PK Memorandum, 24 Apr 95)

1. In response to your request, we have taken another look at the need for a deviation to FAR 43.103 to document a supplemental agreement with a unilateral modification, referencing the contractor's written concurrence. HQ AFMC/JAQ and HQ AFMC/PKM concur with the OO-ALC/JAN opinion that a binding, supplemental agreement can be achieved by incorporating a contractor's written agreement with terms and conditions included in a unilateral modification. It is, of course, critical that no new terms be added by the modification. We recognize that this reflects a reversal of the position we provided to WR-ALC/PKP in Sep 93; however, it is clear that case law recognizes two types of supplemental agreements: *contractual modifications accomplished by the mutual actions of the parties (FAR 43.101)* and *contractual modifications signed by the contractor and the contracting officer (FAR 43.103(a))*.

2. We were unable to identify any basis for the DAR Council decision to allow the prior deviation to lapse, but SAF/AQCF agrees that a deviation is not considered necessary to use this form of supplemental agreement. It is important, however, to note that a bilateral document insures that all rights of the government are properly conveyed to and accepted by the contractor, including release of claims. It is also important to recognize that obtaining the contractor's signature on the SF30 avoids a significant risk of ambiguity and misinterpretation. In most cases, sufficient time is available in processing a modification to enable bilateral signatures so the business decision to proceed with only the contracting officer's signature on the SF30 should be thoroughly justified.

3. We sincerely regret our delay in this response and any inconvenience that it has caused your buying activities. If you have any questions, please call my action officer, Ms. Bonnie Taylor, HQ AFMC/PKM, DSN 787-2717.

DOUGLAS G. JONES

Acting Chief, Contract Management Division  
Directorate of Contracting

cc: WR-ALC/PK Atch 96-2D (Post to FAR 43.101 and 43.103 by circling the references and noting in the margins: "70-41, atch 96-2D." Then file this atch behind the sups to FAR 43.